

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRANSCIENCE CORPORATION and
YOLANDA VON BRAUNHUT,

Plaintiffs,

– against –

BIG TIME TOYS, LLC,

Defendant.

OPINION AND ORDER

13 Civ. 6642 (ER)

Ramos, D.J.:

On April 7, 2017, Plaintiff filed a letter seeking a conference to address (1) whether Defendant's expert should be permitted to testify; (2) whether Plaintiff's proposed expert should be permitted to testify; (3) whether Plaintiff sufficiently pled a New York common law trademark infringement claim; (4) and if not sufficiently pled, whether Plaintiff could be granted leave to amend the pleadings; and (5) whether punitive damages may be asserted for Plaintiff's trademark infringement claim. Doc. 173. The parties also requested that the Court determine whether Plaintiff was the owner of the trademarks, and therefore had standing to pursue the trademark infringement claim under the Lanham Act.

For the reasons stated on the record at the April 20, 2017 conference, the Court orders the following:

- Plaintiff's request to exclude Defendant's expert's testimony is DENIED. Defendant's expert is permitted to testify on the issue of damages, including on the value of the trademarks at issue as registered and not registered and Plaintiff's purported damages.
- Plaintiff's request to introduce an expert on the issue of damages is DENIED.

- Plaintiff's request to amend her pleadings to include such a claim is DENIED. The Second Amended Complaint does not adequately assert a New York common law trademark infringement claim.
- Plaintiff's request to include a jury instruction on punitive damages is DENIED.
- Defendant's motion to dismiss the federal trademark infringement claim is GRANTED. Plaintiff failed to adequately show that she was the owner of the trademarks at the time the Complaint was filed.

The Clerk of the Court is respectfully directed to terminate the motions, Docs. 195, 197.

It is SO ORDERED.

Dated: April 24, 2017
New York, New York



Edgardo Ramos, U.S.D.J.